



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
MARCH MOUNTAIN PROPERTIES, LLC
FOR
Old Trail Village Subdivision
Permit No. VAR10
Registration No. VAR100043**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and March Mountain Properties, LLC, regarding the Old Trail Village Subdivision, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "Impacts" means results caused by those activities specified in § 62.1-44.15:20 A of the Code of Virginia.
8. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
9. "March Mountain Properties, LLC" means "March Mountain Properties, LLC" a limited liability company authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. March Mountain Properties, LLC is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law and the Regulation on July 1, 2019 and which expires on June 30, 2024. March Mountain Properties, LLC applied for registration under the Permit and was issued Registration No. VAR100043 on July 1, 2019.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means the Virginia Stormwater Management Program (VSMP) Regulation at 9 VAC 25-870-10, et seq.
17. "Site" means the Old Trail Village Subdivision located at Old Trail Drive in Albemarle, Virginia, from which discharges of stormwater associated with construction activity occur.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "SWPPP" means Stormwater Pollution Prevention Plan.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "VWP permit" means an individual or general permit issued by the board under § 62.1-44.15:20 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

SECTION C: Findings of Fact and Conclusions of Law

1. March Mountain Properties, LLC is the owner and operator of the Site.
2. On July 1, 2019, DEQ granted coverage to the March Mountain Properties, LLC under the 2019 VPDES General Permit for Discharges of Stormwater Associated with Construction Activities, VAR10, assigning it registration number VAR100043. No VWP permit was issued for this project as surface water impacts were not proposed during the application process.
3. The Permit allows March Mountain Properties, LLC to discharge stormwater associated with industrial activity from the Old Trail Village Subdivision to state waters in compliance with the terms and conditions of the Permit.
4. On August 18, 2019, DEQ received a complaint alleging that sediment, a pollutant, was being discharged into Slabtown Branch, a state water, downstream of Old Trail Village Subdivision. March Mountain Property, LLC representatives confirmed that on August 16, 2019 a discharge of pollutants occurred impacting 1,300 linear feet of Slabtown Branch.
5. On August 23, 2019, DEQ staff conducted a Virginia Water Protection permit program inspection and made the following observations:
 - a. The sediment discharged from the Old Trail Village Subdivision was due to a failed sediment trap along the southeast project boundary adjacent to Slabtown Branch. The areas where sediment discharged in the upland and potential wetland areas adjacent to Slabtown Branch had been stabilized with straw mulch. The sediment observed in Slabtown Branch was less than 1 inch in depth, but a fine sediment layer covered the stream channel and stream banks. DEQ staff continued downstream along Slabtown Branch to the confluence with Lickinghole Creek, a State Water. DEQ staff observed a fine sediment layer in Lickinghole Creek and along the banks in Slabtown Branch for much of the distance between the Old Trail Village Subdivision and the culvert crossing at Crozet Avenue. DEQ staff continued downstream from the Crozet Avenue culverts and observed sediment discharges intermittently, primarily along the stream banks, until the confluence with Lickinghole Creek. The total estimate of stream channel impacts observed were 4,100 linear feet.
 - i. Va. Code §§ 62.1-44.5 and 62.1-44.15:20 states that except in compliance with an individual or general Permit it shall be unlawful to discharge pollutants into state waters or alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life.

6. On August 27, 2019, DEQ staff conducted an inspection for compliance with the Permit and observed the following:
- a. A copy of the Permit coverage letter was not observed at the entrance of the Site. A SWPPP was not available on-site and was not made available to the Department upon the request of DEQ staff. No notice of the SWPPP's location was posted near the main entrance of the Site.
 - i. Permit Part II.D states in part that, "Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity."
 - ii. Permit Part II.E states that: "Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site."
 - iii. "The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity."
 - iv. 9 VAC 25-870-54(G) states in part that, "The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site."
 - b. Operable storm sewer inlets were exposed and not protected with sediment trapping measures. Stormwater pipes were observed without outlet protection.
 - i. 9 VAC 25-840-40.10 states that, "All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."
 - ii. 9 VAC 25-840-40.11 states that, "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel."
 - c. Areas that had been denuded for more than 14 days were not stabilized and recently repaired diversion dikes were not stabilized.

- i. 9 VAC 25-840-40.1 states that, “Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.”
 - ii. 9 VAC 25-840-40.5 states that: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”
 - d. Sediment trapping measures were not in effective operating condition.
 - i. Permit Part II.F.1 states that, “All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices.”
 - e. March Mountain Properties, LLC failed to implement the pollution prevention plan and practices by having open containers of diesel exhaust fluid and pipe joint compound.
 - i. Permit Part II.B.4.e.2-3 states that, “The SWPPP shall include the following items...4. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:...e. Describe the pollution practices and procedures that will be implemented to: (2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available); (3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants).”
7. On September 12, 2019, DEQ issued NOV No. 2019-VRO-0023 for the violations cited above in paragraphs C(5) and C(6).
 8. On September 19, 2019, the Responsible Party responded to the NOV. A corrective action report was submitted demonstrating that all Permit violations had been corrected. The corrective action report stated that the discharge of sediment was due to a major

storm event. DEQ agreed that no corrective action is required for the sedimentation discharge as it was either naturally attenuated or physical removal was anticipated to cause more damage. No further corrective action is required to address the violations cited in NOV No. 2019-VRO-023.

9. Based on the results of the August 23, 2019 and August 27, 2019 inspections and correspondence with March Mountain Properties, LLC, the Board concludes that March Mountain Properties, LLC violated Va. Code §§ 62.1-44.5 and 62.1-44.15:20, 9 VAC 25-210-50, 9 VAC 25-840-40(1),(5), (10), (11), 9 VAC 25-870-54(G), and the conditions of 2019 Permit Parts II(D), II(D)(4)(E)(2-3), II(E), and II(F)(1) as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders March Mountain Properties, LLC, and March Mountain Properties, LLC agrees to:

1. Pay a civil charge of \$29,225 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

March Mountain Properties, LLC shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit as follows: \$32,500 into the Virginia Environmental Emergency Response Fund (VEERF) and \$14,625 into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, March Mountain Properties, LLC shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of March Mountain Properties, LLC for good cause shown by March Mountain Properties, LLC, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2019-VRO-0023. This Order shall not preclude the Board or the

Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, March Mountain Properties, LLC admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. March Mountain Properties, LLC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. March Mountain Properties, LLC declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by March Mountain Properties, LLC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. March Mountain Properties, LLC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. March Mountain Properties, LLC shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. March Mountain Properties, LLC shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and

- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and March Mountain Properties, LLC.
11. This Order shall continue in effect until:
 - a. the Director or his designee terminates the Order after March Mountain Properties, LLC has completed all of the requirements of the Order;
 - b. March Mountain Properties, LLC petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to March Mountain Properties, LLC.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve March Mountain Properties, LLC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by March Mountain Properties, LLC and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of March Mountain Properties, LLC certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind March Mountain Properties, LLC to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of March Mountain Properties, LLC.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, March Mountain Properties, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2022.

Amy Thatcher Owens, Regional Director
Department of Environmental Quality

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March Mountain Properties, LLC voluntarily agrees to the issuance of this Order.

Date: 2/1/2022 By: [Signature], Manager
(Person) (Title)

Commonwealth of Virginia

City/County of Albemarle

The foregoing document was signed and acknowledged before me this 1st day of
February, 2022, by Suzanne J. Brooks who is
Manager of March Mountain Properties, LLC, on behalf of the
company.

[Signature]
Notary Public

252832
Registration No.

My commission expires: 10/31/2025

Notary seal:

